

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: New Business

Report Prepared by: James Lindsay

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**TITLE:** AMENDMENT TO THE PLANNING COMMISSION BYLAWS

**Proposal:** Amend the bylaws to provide more flexibility in scheduling special meetings.

**Location:** N/A

**APN:** N/A

**RECOMMENDATION:** Adopt Resolution No. 495

**Applicant:** N/A

**Property Owner:** N/A

**Previous Action(s):** N/A

**General Plan Designation:** N/A

**Present Zoning:** N/A

**Existing Land Use:** N/A

**Agenda Sent To:** N/A

**Attachments:** N/A

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### BACKGROUND

The Planning Commission adopted its current bylaws in May 2002 by resolution. Section 7.01 of the bylaws sets the regularly scheduled meeting date for the Commission as the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday of each month. Section 7.02 defines any meeting that is not a regularly scheduled meeting as a special meeting and limits actions at special meeting to non-legislative matters. Legislative matters include any actions related to the general plan, specific plan, or zoning ordinance. The Planning Commission typically only conducts one meeting in November and December due to the Thanksgiving and Christmas holidays. Situations may arise where the Commission may wish to reschedule a meeting or hold an additional meeting on a day that is not considered a regular meeting date and the bylaws currently restrict the types of items that can be considered under those circumstances.

## PROPOSAL

Staff is recommending a modification to the bylaws that will provide the Commission more flexibility in the items it considers during meetings conducted outside the regular meeting schedule. The recommended change to Section 7.02 is as follows:

### 7.02 Special Meetings

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule ~~and are for the purpose of considering non-legislative matters.~~ Special meetings may be called by the Chair with the consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.

Any modifications to the bylaws need to be approved by Planning Commission and City Council resolutions. Staff has prepared a draft resolution with the suggested changes for the Commission's consideration. If adopted, staff will prepare a City Council resolution for their October 19<sup>th</sup> meeting.

## RECOMMENDATION

Adopt Resolution No. 495.

**RESOLUTION NO. 495**

A RESOLUTION OF  
THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
AMENDING THE BYLAWS FOR THE PLANNING COMMISSION

WHEREAS, the City Council of the City of Milpitas established the Planning Commission and granted to it responsibilities in the area of land use, redevelopment issues and planning permit decisions; and

WHEREAS, the City of Milpitas Municipal Code states that the Planning Commission shall adopt written rules and regulations as to the time, place, and date of its regular scheduled meeting and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure; and

WHEREAS, such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions, or regulations of the City of Milpitas; and

WHEREAS, Planning Commission Resolution No. 490 and City Council Resolution No. 7187 established bylaws regarding Planning Commission meetings and conducting business; and

WHEREAS, Planning Commission finds that the bylaws do not provide enough flexibility in scheduling meetings outside the normal meeting schedule to consider legislative items during the holiday months when only one meeting is scheduled.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Milpitas hereby amends Section 7.02 of the bylaws as follows:

**7.02 Special Meetings**

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule ~~and are for the purpose of considering non-legislative matters~~. Special meetings may be called by the Chair with the consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Milpitas hereby orders all current and future Planning Commissioners to conform to the attached amended bylaws in Exhibit "A".

PASSED AND ADOPTED this 13<sup>th</sup> day of October 2004 by the following vote:

AYES:

NOES:

Approved:

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Deepka Lalwani,  
Planning Commission Chair

Attest:

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James Lindsay,  
Acting Planning Manager

**CITY OF MILPITAS  
PLANNING COMMISSION  
BYLAWS**



**October 2004**

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**BYLAWS  
of the  
CITY OF MILPITAS PLANNING COMMISSION**

**Section 1 - Preface**

As set forth in Title I, Chapter 500, Section 1.08 of the City of Milpitas Municipal Code (“Code”), the Planning Commission shall adopt written rules and regulations as to the time, place and date of its regular meetings and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure. Such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions or regulations of the City of Milpitas.<sup>1</sup> These bylaws are prepared to serve this purpose.

The City Council of the City of Milpitas established the Planning Commission and granted to it responsibilities in the area of land use, redevelopment issues, and planning permit decisions. These bylaws are intended to assist and be used by the Planning Commission in performing its duties and conducting its meetings. If a conflict arises between these bylaws and the City of Milpitas Municipal Code, the Code shall control.

**Section 2 – Adoption and Amendment**

**2.01 Planning Commission Adoption and Amendment**

These bylaws shall be adopted by and may be amended by resolution of a majority of the Commissioners present at any Milpitas Planning Commission meeting.

**2.02 City Council Adoption and Amendment**

Upon adoption or amendment by the Planning Commission, such bylaws shall be submitted to the City Council for review. The City Council shall have the power to approve, disapprove or modify said bylaws, as it deems necessary.<sup>1</sup>

**Section 3 - Membership**

**3.01 Composition**

The Planning Commission shall consist of seven (7) members. The initial selection of the members shall be as set forth in a resolution approved by the City Council. Thereafter, the members shall be appointed by the majority of the City Council.<sup>1</sup>

### **3.02 Qualifications**

At all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas. A Planning Commissioner shall not hold any other public office or employment in the government of the City of Milpitas. <sup>1</sup>

### **3.03 Application for Appointment**

All applications for Planning Commissioners may be reviewed by any City Councilmember. In addition to any other process for the selection of Planning Commissioners, any City Councilmember may recommend to the Mayor a candidate for appointment to the Planning Commission from the entire pool of applicants. <sup>1</sup>

### **3.04 Terms of Office**

The term of office for each Planning Commissioner shall be three (3) years, commencing on the first day of January and concluding on the 31<sup>st</sup> day of December of the third year thereafter. These regulations intend to preserve the concept of staggered terms for members of the Planning Commission (established by earlier City ordinances). <sup>1</sup>

### **3.05 Removal from Office**

Any or all Planning Commissioners may be removed from office prior to the expiration of the normal term of office without cause upon an affirmative vote of three (3) City Councilmembers, at a regular meeting of City Council. <sup>1</sup>

### **3.06 Vacancy**

Any vacancy on the Planning Commission shall be filled by the Mayor with the approval of the City Council within sixty (60) days of the date the vacancy is created. Any Commissioner appointed to fill a vacancy shall complete the unexpired portion of the normal term of the Commissioner whose office has become vacant. <sup>1</sup>

Except in the case of a Commissioner who has been removed from office by vote of the City Council, a Commissioner shall remain in office until his/her successor has been appointed and takes office.

### **3.07 Compensation**

Each Planning Commissioner shall receive compensation in the amount of \$25.00 for attending any regularly or specially scheduled Planning Commission meeting. Such compensation shall not be provided for attending subcommittee meetings. <sup>1</sup>

## **Section 4 – Subcommittees**

### **4.01 Creation of Subcommittees**

The Planning Commission may create subcommittees composed of at least two (2) members of the Planning Commission. <sup>1</sup>

#### **4.02 Minor Site, Architectural and Landscaping Modifications Subcommittee**

##### **Duties**

The duties of this Subcommittee are set forth in XI-10-42.10 of the City of Milpitas Zoning Code and shall generally pertain to minor site modifications and modifications to architecture and landscaping.

##### **Meetings**

The Subcommittee meeting shall be held prior to the start of the regularly scheduled Planning Commission meeting. The agenda items for the Subcommittee shall be included on the Planning Commission agenda.

##### **Attendance**

The Subcommittee shall consist of two (2) members and an alternate. Attendance of the two (2) members at Subcommittee meetings is required and attendance of the alternate is highly recommended.

##### **Terms**

Subcommittee terms shall be a period of three months. The terms shall run from January 1<sup>st</sup> through March 31<sup>st</sup>, April 1<sup>st</sup> through June 30<sup>th</sup>, July 1<sup>st</sup> through September 30<sup>th</sup>, and October 1<sup>st</sup> through December 31<sup>st</sup>. At a regularly scheduled Planning Commission meeting, prior to the beginning of a new term, Planning staff shall announce the Subcommittee members serving on the upcoming term based on the rotation schedule below.

In order to avoid, where possible, having recently-appointed Planning Commissioners with no previous experience on the Planning Commission serving on the Subcommittee, Planning staff shall assign to each Planning Commissioner upon appointment to the Planning Commission a position in the rotation schedule below. Each member of the Planning Commission shall begin his/her service on the Subcommittee as an alternate member for one term. The same Commissioner shall then occupy the 1<sup>st</sup> active member position for a subsequent term, and proceed to the 2<sup>nd</sup> active member position for the final term of the rotation. Nine months of service completes a full rotation on the Subcommittee.

<b>Subcommittee Term</b>	<b>Alternate</b>	<b>1<sup>st</sup> Active</b>	<b>2<sup>nd</sup> Active</b>
January 1 <sup>st</sup> through March 31 <sup>st</sup>	A	B	C
April 1 <sup>st</sup> through June 30 <sup>th</sup>	G	A	B
July 1 <sup>st</sup> through September 31 <sup>st</sup>	F	G	A
October 1 <sup>st</sup> through December 31 <sup>st</sup>	E	F	G

January 1 <sup>st</sup> through March 31 <sup>st</sup>	D	E	F
April 1 <sup>st</sup> through June 30 <sup>th</sup>	C	D	E
July 1 <sup>st</sup> through September 31 <sup>st</sup>	B	C	D
October 1 <sup>st</sup> through December 31 <sup>st</sup>	A	B	C

#### **Inability to Serve Due to Conflicts of Interest**

In order to maintain the effectiveness of the Subcommittee, each Commissioner, prior to becoming a Subcommittee member, shall consult with the Planning staff and City Attorney to determine the likelihood of facing regular conflicts due to involvement in a real estate related profession. Should a Commissioner determine, based on the advice of the City Attorney, that s/he is likely to face regular conflicts of interest, the Commissioner shall abstain from participating on the Subcommittee as either a member or alternate. If a member cannot participate on the Subcommittee due to such a conflict, the Planning Commission Chair shall serve in his/her place. If the Chair cannot serve due to a conflict, then the Planning Commission Vice-Chair shall serve. If neither the Chair nor Vice Chair can serve due to such conflicts, the Commissioner with the longest years of service shall serve.

#### **4.01 Planning Commission Representation on City Subcommittees**

Upon the request of the City Council or City staff, Planning Commission representation may be required on various City subcommittees, such as the Transportation Subcommittee and the Flood Plain Subcommittee. The appointment of a representative shall be made annually by the majority vote of the Planning Commission at the regularly scheduled meeting when the Chair and Vice Chair are appointed, unless a particular representative has been specified by the City Council.

### **Section 5 – Commission Officers and Duties**

#### **5.01 Officers**

The officers of the Planning Commission shall consist of a Chair, Vice-Chair, and a Secretary.

#### **5.02 Selection**

At its first regular meeting held for the transaction of business during July, the Planning Commission shall elect a Chair and a Vice Chair for such fiscal year. When a vacancy exists in the office of Chair or Vice Chair, the Planning Commission shall elect a member to serve in such capacity for the remainder of the fiscal year. The City of Milpitas staff liaison to the Planning Commission shall serve as the Planning Commission Secretary unless the Planning Commission chooses to appoint its own secretary at said meeting.

The Secretary shall preside over the elections of the Planning Commission officers. Election of the officers shall be placed on the agenda after approval of the agenda.<sup>1</sup>

### **5.03 Duties**

The duties of the Planning Commission officers shall be as follows:

#### **Chair**

The Chair shall preside over all meetings of the Planning Commission.

#### **Vice Chair**

The Vice-Chair shall assist the Chair in the execution of his/her office and to act in his/her absence.

#### **Secretary**

It shall be the duty of the Secretary to keep records of all meetings of the Planning Commission.

## **Section 6 – Commission Duties**

### **6.01 General Duties**

The Planning Commission is the Planning agency for the City of Milpitas. The Planning Commission shall perform all of those duties related to planning and land use, which have been delegated to it by the City Council. These duties are set out in Title XI, Chapter 1 (subdivisions) and Title XI, Chapter 10 (zoning) of the City of Milpitas Municipal Code, and include such actions as making decisions on use permits, site and architectural reviews, variances, making recommendations on general plan, specific plan and zoning amendments, and participating in the CEQA compliance process.

Each Planning Commissioner and the Planning Commission shall have the following duties and powers:

- a. Those specifically authorized by the law of the State of California.<sup>1</sup>
- b. Such duties as are assigned to the Planning Commission by minute action, resolution, or ordinance of the City of Milpitas.<sup>1</sup>
- c. Such powers as are reasonable and necessary in order to enable the Planning Commission to fulfill and carry out its planning functions (see Government Code, Section 65102).<sup>1</sup>
- d. Such powers as are reasonable and necessary in order to enable the Planning Commission to advise the City Council with respect to redevelopment functions set forth in the Health and Safety Code, and to make recommendations regarding owner participation agreements.<sup>1</sup>

### **6.02 General Plan**

The Planning Commission shall review, evaluate, and recommend for adoption a comprehensive, long range, general plan for the physical growth and development of the City of Milpitas and its environs.

### **6.03 Specific Plan**

The Planning Commission shall review, evaluate, and recommend for adoption specific plans designed to effectuate and implement the General Plan.

## **Section 7 - Meetings**

### **7.01 Regular Meetings**

The Planning Commission regular meetings shall be the 2nd and 4th Wednesdays of each month at 7:00 p.m. in City Hall. The Planning Commission shall not hold less than one (1) meeting per month. At the last regular meeting of the calendar year, the Planning Commission shall approve a meeting schedule for the upcoming year.<sup>1</sup>

### **7.02 Special Meetings**

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule. Special meetings may be called by the Chair with the consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.<sup>2</sup>

### **7.03 Other Meetings**

#### **Workshops**

Workshops are meetings convened for informational purposes, Planning Commission training, and study sessions and do not require the Planning Commission to take any action. Workshops and agendas posted for workshops are subject to the Brown Act.<sup>2</sup>

#### **Emergency Meetings**

The Brown Act allows for emergency meetings, however, given the Planning Commission's authority it is unlikely that this will be necessary.<sup>2</sup>

### **7.04 Attendance and Punctuality**

Commissioners are expected to arrive on time and be present for the entire meeting. Commissioners are important City officials whose actions and decisions impact the quality of life in the city. Therefore, only in rare, unavoidable circumstances should Commissioners miss meetings or workshops. If a Planning Commissioner misses three (3) meetings or workshops during a calendar year, the Secretary shall forward this

information to the City Clerk to request Council review of the Commissioner's attendance record. The purpose of this review will be to determine any extraordinary reasons or other explanations for the Commissioner's absence. The said review will be held during a regularly scheduled City Council meeting and at the conclusion of said review the City Council will hold a vote to determine if the Planning Commissioner should be removed from office.

#### **7.05 Quorum**

A meeting cannot be conducted without a quorum of the Planning Commission and a quorum shall consist of a majority of the entire Commission. If enough Commissioner's abstain due to a conflict of interest so as to lose a quorum, the Commission shall exercise the rule of necessity to regain a quorum. Otherwise disqualified Commissioners shall be chosen by a draw of straws until a quorum is reached. The Commissioner so chosen shall continue to participate in that matter until concluded.

### **Section 8 – Agendas and Minutes**

#### **8.01 Agenda Preparation and Distribution**

Not less than nine (9) days prior to any regular scheduled meeting, the secretary of the Commission shall prepare an agenda which shall list all matters to be considered by the Commission at the meeting for which the agenda is prepared. This agenda is a public record and shall be distributed no less than five (5) days prior to the scheduled meeting to all members of the Commission, staff, anyone requesting such agenda and to other persons as the Commission and City Council may direct.

#### **8.02 Agenda Contents**

The agenda shall contain the place, date and time of the meeting and items to be discussed at the meeting, consistent with the Brown Act.<sup>2</sup>

Items can be placed on the agenda by staff as part of their responsibility in reviewing planning applications and administering city projects. In addition, the City Attorney may recommend, where appropriate, pending litigation matters be placed on the agenda as closed session items, consistent with the Brown Act.<sup>2</sup>

Any Commissioner may request to place an item on a future Commission agenda. Staff shall advise the Commission how much time may be necessary to prepare background materials related to the requested item and when the next available agenda opening would be. By majority vote, the Planning Commission may place the requested item on a future available agenda.

The Chair shall have the authority to independently place items on the next available or other upcoming Commission agenda by presenting said items to the Secretary. It is a policy of the Planning Commission to provide seventy-two (72) hours when possible to allow staff to prepare appropriate support materials.

Items of “immediate need” may be added to the agenda at the same meeting, subject to the provisions of the Brown Act.<sup>2</sup>

### **8.03 Minutes**

The Planning Commission shall keep a record of its resolutions, transactions, findings and determinations. The Secretary shall maintain minutes of all proceedings. The meeting agenda and minutes are a public record and available for inspection.

The minutes shall reflect the maker of the motion and the second for all actions. The vote of each Commissioner shall be recorded in the minutes.

## **Section 9 – Meeting Conduct**

### **9.01 Purpose**

The Planning Commission is a public agency with land use planning and decision-making duties. It is the policy of the Planning Commission to encourage free and open discussion of issues on a Planning Commission meeting agenda, but also to ensure that the Commission completes the agenda in a timely manner and in a process that accords courtesy and respect to all participants.

### **9.02 Rules**

Robert’s Rules of Order, Revised, except where inconsistent with the express provisions of law, these bylaws, or other resolutions of the Commission, shall govern the conduct of meetings of the Commission.

### **9.03 Close of Public Hearing**

No evidence shall be taken after the public hearing is closed on a matter. The public hearing may be reopened to take additional evidence, at the discretion of the Commission, prior to action on the matter.

### **9.04 Addressing the Commission**

As per the Brown Act<sup>2</sup>, the public may comment on any agenda item, however shall do so in the following manner:

Each person addressing the Commission shall give his/her name and address in an audible tone of voice for the record and shall write the same on a speaker register used to prepare the meeting minutes. He/she shall state whether he/she is appearing as a representative or in a professional capacity such as an attorney, engineer, etc., and shall state the name of the individual or organization he/she is representing. Unless additional time is granted by the Chair, all remarks shall be limited to two (2) minutes and shall be addressed to the Commission as a body and not to any individual member thereof. The Chair may limit repetitive testimony in the interest of time. No person, other than members of the Commission and the person having the floor, shall be permitted to enter

into any discussion, either directly or through a member of the Commission, except through the Chair. Any person who wishes to address the City Attorney or staff shall do so through the Chair and not pose questions or remarks to the Attorney or staff directly.

#### **9.05 Motions**

When making a motion, the following options are available:

- (a) Deny without prejudice
- (b) Deny with prejudice
- (c) Approval
- (d) Approval with conditions
- (e) Continue (table)

#### **9.06 Voting**

The Chair has the right to vote and make a motion on any issue before the Commission. He/she need not exclaim his/her vote except to break a tie and if not exclaiming his/her vote, it will be recorded with the majority unless so designated otherwise.

The vote of all Planning Commissioners, including the Chair, shall be recorded and no vote shall be taken in secret. All Planning Commissioners are required to vote on an item when legally able to do so.

#### **9.07 Super-Majority Vote**

Some planning actions, such as approval recommendations for general plan or specific plan amendments, require a super-majority vote, i.e., the affirmative vote of not less than a majority of the total membership of the Planning Commission. The super-majority vote requires the affirmative vote of four (4) of the seven (7) Planning Commissioners.

#### **9.08 Tie-Vote, Lack of Majority Vote**

A tie-vote occurs when there is an equal number of Commissioners who voted in favor of a motion as have voted not in favor of a motion, such as a 3-3 vote. A lack of majority of vote occurs when less than half of the votes cast support the motion, such as a 3-4 vote. When either a tie-vote or lack of majority vote occurs the motion fails, thereby resulting in no action. A majority vote is necessary to take an action on an item, regardless of whether the Planning Commission has final authority or advisory authority.

In the event of a tie-vote, the Planning Commission may consider continuing the item in order to obtain of a majority vote. However, the tie-vote shall be resolved in a timely manner to ensure no project is inadvertently deemed approved under the Permit Streamlining Act.

The failure of the Planning Commission to make a majority recommendation to the City Council regarding amendments to the General Plan results in the item not going forward to the City Council, unless the applicant appeals. In all cases, the Planning Commission shall work towards formulating a majority recommendation. If this cannot be achieved, the Planning Commission shall clearly summarize their issues to provide direction to the applicant or to the City Council.

### **9.09 Abstentions**

Prior to taking action, the Commission must receive and weigh all presented evidence and testimony. In cases where a Commissioner is not present for public testimony on an item, the Commissioner should abstain from voting. In cases where an item has been continued from a meeting at which a decision-maker has been absent, the decision-maker can review the videotape of the meeting or the meeting minutes and participate in the continued hearing and vote.

A Planning Commissioner abstaining from voting shall state a reason. The abstention shall generally be counted as a vote with the majority. Examples of abstentions that would not be recorded as a vote for the motion include, but are not limited to, abstentions due to a conflict of interest, when an affirmative vote is required for the matter, or if the abstention would break a tie vote.

### **9.10 Passing the Gavel**

When neither the Chair nor the Vice Chair is present or able to vote due to a conflict of interest, the gavel shall be passed to the Commissioner with the longest years of service as a Planning Commissioner to preside over the meeting and/or the agenda item.

### **9.11 Seating Arrangement**

To encourage the integration of recently appointed Commissioners, a meeting seating arrangement shall be established by the Chair.

### **9.12 Exhibits**

All exhibits filed in connection with any pending matter become part of the record of the proceedings and shall be retained subject to compliance with applicable records retention policies of the City.

### **9.13 Order of Procedure, Public Hearing Guidelines**

The following guidelines are for general agenda items. Variations on the guidelines for public hearing items are noted in parentheses.

- Staff report
- Clarifying questions to staff
- Applicant presentation
- Clarifying questions from Commissioners to Applicant
- Public comment on item (Chair opens public hearing)
- Applicant responds to questions, comments for clarification, amplification
- (Close public hearing by motion of Commission)
- Commissioners deliberate, discuss the item
- Commissioners vote

The Chair may vary the order otherwise provided above.

#### **9.14 Notice of Hearings**

The Commission may require a notice in addition to that required by law. In such cases, the Chair shall direct that notice be given by a specified method. Failure to provide this additional notice shall not be grounds for the Planning Commission to deny or not consider the request.

#### **9.15 Reports by Staff or its Consultants**

Written reports by staff or its consultants shall be considered a part of the official record of the proceeding to which they relate. Copies of any such written report shall be made available to the public at any hearing held on the proceeding to which such report relates

### **Section 10 – Commissioner Conduct**

#### **10.01 Purpose**

The Planning Commission recognizes that differences of opinion are inherent in its land use subject matter and duties, whether they are differing opinions among Commissioners, or, between Commissioners and staff, or Commissioners and the public. The Commission also recognizes that discussion and resolution of such differences are often the basis for crafting land use decisions that are most appropriate for the City and its neighborhoods. It is the policy of the Planning Commission to recognize such differences and to provide a forum that allows them to be expressed in a respectful, courteous manner.

#### **10.02 Recognition from Chair to Make Remarks**

A Commissioner shall obtain recognition from the Chair and address all remarks including those to staff and the City Attorney to the Chair. Once a Commissioner has the floor, questions to the City Attorney and staff shall be directed through the chair.

#### **10.03 Appropriate Remarks**

A Commissioner should confine remarks to the merits of the pending question. All statements should have bearing on the adoption of the immediately pending question.

A Commissioner should refrain from offensive remarks directed towards another Commissioner or staff.

A Commissioner should not read lengthy passages from reports, books, quotations, etc., without permission of the Commission.

#### **10.04 When to Withdraw a Motion**

The maker of a motion who no longer supports his/her motion should ask permission to withdraw the motion. The maker of a motion may vote against the motion but cannot speak against it.

#### **10.05 Courtesy to Others**

A Commissioner should refrain from disrupting the Commission and give courteous attention to other speakers.

No member should speak a second time on a question if any member who has not yet spoken on the question wants to do so.

A Commissioner should be open to all concerns and listen to all participants with an open mind, even if he/she disagrees with them.

#### **10.06 Ex-parte Communication**

Commissioners are discouraged from suggesting any change to any project to the applicant or staff, before the project is considered by the Commission as a whole. In addition, to ensure that all Commissioners receive the same information relative to a project that will be reviewed by the Commission, third party contacts are discouraged. Any such communications should be disclosed by the Commissioner at the Commission meeting, prior to the item being considered.

#### **10.07 Communications with the Press**

When speaking to the press, Commissioners should be very specific in stating that they are speaking for themselves only and not for the Commission as a whole.

#### **10.08 Professionalism**

Commissioners are expected to exhibit a professional demeanor during public meetings at all times, to ensure decorum and respect to fellow Commissioners, City staff and the public.

As Milpitas City officials, it is important that Commissioners dress professionally. During the summer months, from July through September, Commissioners may dress for very warm weather, however, attire should be appropriate for public meetings.

#### **10.09 Continued Training**

Commissioners should continually strive to improve their land use knowledge and skills.

Members of the Planning Commission are encouraged to annually attend the League of California Cities Planner's Institute and may additionally attend the League's Annual Conference. Planning Commissioners may choose to attend local conferences or trainings rather than the League's Conference if the following two factors are satisfied: (1) the conference or training is related to planning issues applicable in Milpitas, and (2) the amount of money expended by any one Commissioner does not exceed the cost of attending the two League Conferences, as budgeted for the year.

#### **10.10 Meeting Preparation**

The General Plan is the City's vision for itself and all Planning Commission decisions must be consistent with it. The Zoning Ordinance is a tool used by the Commission to implement the General Plan. These are Council approved documents and legally binding. It is the responsibility of each Planning Commissioner to read and comprehend both the

General Plan and the Zoning Ordinance in order to make sound decisions on issues brought before the Commission.

The effectiveness of the Planning Commission requires the Commissioners thoroughly prepare themselves prior to a public meeting. This may include site visits, research or calling upon city Planning staff for clarification and understanding of what is to be discussed.

#### **10.11 Meeting Participation**

Each Commissioner's input is important and valued. All Commissioners in attendance are expected to participate.

#### **10.12 Position Justification**

Public decisions must be accompanied with coherent reasons since statements are incorporated into the legal record.

#### **10.13 Staff and Commissioner Roles**

##### **Staff's Role**

Planning staff's role is to provide the Commission with the information it needs to make an independent decision and to provide the Commission with a professional recommendation supported with analysis. Staff's responsibilities include public noticing and reviewing of applications for completeness and compliance with all local and state codes, including the California Environmental Quality Act (CEQA). In addition, staff shall assist with facilitating meetings, when needed.

##### **Commissioner's Role**

A Planning Commissioner's role is to review the information provided by staff, evaluate written and oral testimony provided by the general public and the applicant, to analyze the project proposal itself, and to make an independent decision which is in the best interests of the City and in conformance with applicable laws and regulations.

#### **10.14 The Brown Act**

The Brown Act is the California Open Meeting Law. The Planning Commission and Commissioners are subject to its provisions.<sup>2</sup> Commissioners with questions should contact the City Attorney, the Planning Commission Chair or Planning staff.

#### **10.15 Addressing Others**

The appropriate title should be used when acknowledging a meeting participant, such as "Mr.", "Ms.", "Commissioner", "Chair", "Vice-Chair", etc. This shows respect, professionalism and avoids the appearance of favoritism.

#### **10.16 Conflicts of Interest/Code of Ethics**

The City Attorney can provide advice on avoiding legal and perceived conflicts of interest. Questions on a possible conflict should be addressed to the City Attorney prior to the meeting. Any member of the Planning Commission who has a conflict of interest

with an item on the agenda shall excuse him/herself prior to the introduction of the agenda item.

If at a meeting, an unresolved issue arises as to whether a Planning Commissioner may have a conflict of interest on an agenda item, the Planning Commission may seek the advice of the City Attorney. The Planning Commission may continue the item to a future agenda for resolution of the matter, with consideration of any applicable Permit Streamlining Act provisions.

Each Commissioner should work towards maintaining the highest actual and perceived integrity level while sitting on the Commission. In addition, Planning Commissioners shall adhere to the Code of Ethics adopted by City Council Resolution 2714, attached in the Appendix.

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<sup>1</sup> These provisions are based on City of Milpitas Municipal Code Title I Chapter 500 (Ordinance 41.8 (part), 1997). Any modifications to these provisions must be consistent with the underlying Code provisions.

<sup>2</sup> Brown Act, California Open Meeting Law, Government Code Sections 54950-54962. The Brown Act generally requires that Planning Commission business occur at public meeting, with notice provided through a posted agenda. The agenda both guides and limits the scope of the Commission business considered at the meeting. Additional notice for specific agenda items may be required pursuant to other statutes and ordinances.